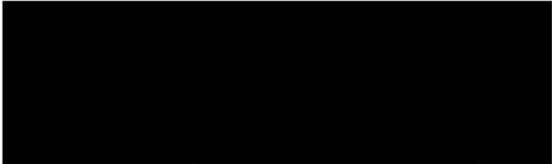


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Services

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FILE: [REDACTED] OFFICE: PORTLAND, ME DATE: JUN 02 2006

IN RE: PETITIONER: [REDACTED]
BENEFICIARY: [REDACTED]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Portland, Maine denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on May 18, 2005. The petitioner is a fifty-year-old married citizen of the United States. The beneficiary was born in Sierra Leone on April 9, 1995, and he is eleven years old.

The district director determined that the petitioner had failed to submit evidence establishing that he legally adopted the beneficiary pursuant to the law in Sierra Leone. The district director noted that a U.S. Embassy overseas investigation had revealed that the birth certificate and adoption order submitted by the petitioner were fraudulent and contained false parentage information. In addition, fraudulent death certificate information contained in the record falsely stated that the beneficiary's claimed parents were dead. The district director determined further that the petitioner had failed to establish that the beneficiary's natural mother is incapable of providing proper care to the beneficiary, as set forth in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b). The district director concluded that the petitioner had therefore failed to establish that the beneficiary met the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The I-600 petition was denied accordingly.

On appeal, the petitioner and his wife (Petitioners) assert that they were unaware that they had been provided with false information or fraudulent documents relating to the beneficiary. The petitioners concede that the beneficiary's natural mother lied about her identity by claiming to be the beneficiary's aunt, and by claiming that the beneficiary's paternal aunt was his mother, that the beneficiary's paternal uncle was his father, and that the beneficiary's parents had died. The petitioners assert, however, that a letter written by a professor of anthropology at Tufts University in Maine supports their belief that the beneficiary's natural mother lied because the beneficiary's deceased father was a rebel and she had a fear of civilian retaliation against the beneficiary. The petitioners assert that the beneficiary's natural mother is not capable or willing to care for the beneficiary. The petitioners assert further that although the beneficiary's paternal aunt cared for the beneficiary while he was young, she is no longer willing to provide or care for him and she has no legal rights over the beneficiary under Sierra Leonean law. The petitioners assert that according to a letter written by the Sierra Leone Ministry of Social Welfare, Chief Social Development Officer (Teresa Vamboi), the beneficiary's adoption order is legally valid in spite of the false parentage and death information submitted in support of the adoption petition. The petitioners conclude that the beneficiary therefore meets the definition of an "orphan" for immigration purposes.

Section 101(b)(1)(F)(i) of the Act provides in pertinent part that an "orphan" is:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) states that:

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.¹

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

The record contains two delayed issued birth certificates for the beneficiary. The first delayed birth certificate reflects that the beneficiary, [REDACTED] was born in Freetown, Sierra Leone on April 9, 1995, to [REDACTED] (mother) and [REDACTED] (father). The record also contains two delayed issued death certificates reflecting that [REDACTED] and [REDACTED] died in Freetown, Sierra Leone on January 6, 1999

September 2005, U.S. Embassy in Freetown, overseas investigation results reflect that the birth and death certificates referred to above are fraudulent. The investigation revealed that the parents listed on the birth certificate are the beneficiary's paternal aunt and uncle rather than his natural parents. The investigation revealed further that the beneficiary's aunt and uncle are still alive.

A second delayed issued birth certificate contained in the record reflects that the beneficiary, [REDACTED] was born in Freetown, Sierra Leone on April 9, 1995 to [REDACTED] (mother) and [REDACTED] (father). The record also contains a delayed issued death certificate reflecting that [REDACTED] died in Freetown, Sierra Leone on January 6, 1999. Overseas investigation results confirm that [REDACTED] and [REDACTED] are the beneficiary's natural parents and that [REDACTED] is deceased.

The record additionally contains two parental relinquishment letters. One letter, used for adoption proceeding purposes, is signed by [REDACTED] and witnessed by [REDACTED] of Cherith International and [REDACTED] Chief Social Development Officer, Ministry of Social Welfare. The letter states that [REDACTED] is the beneficiary's maternal aunt, that the beneficiary's natural parents died during the rebel war, that she cannot provide proper care to the beneficiary, and that she releases any rights over the child to [REDACTED] International orphanage so that the orphanage may place the beneficiary for adoption.

A second letter of relinquishment signed by [REDACTED] and witnessed by [REDACTED] of Cherith [REDACTED] and [REDACTED] Chief Social Development Officer, Ministry of Social Welfare, states that

¹ The record contains no information on whether a child born out of wedlock in Sierra Leone is considered to be legitimate, or is guaranteed the same legal status as a child born in wedlock. The AAO will nevertheless analyze the beneficiary's eligibility under the "sole parent" definition for purposes of the present decision, since the AAO finds that, in any event, the beneficiary does not meet the definition of an "orphan" on separate grounds.

[REDACTED] is the beneficiary's mother, that the beneficiary's natural father died during the rebel war, that she is incapable of providing proper care for the beneficiary, and that she relinquishes her parental rights so that Cherith International orphanage may place the beneficiary for adoption.

The record contains an April 22, 2005, High Court of Sierra Leone Adoption Order authorizing the petitioners to adopt the beneficiary based on an April 12, 2005 affidavit (the affidavit in which the beneficiary's mother claims to be his maternal aunt, and claims that the beneficiary's natural parents are dead.) The record also contains a March 29, 2006 letter signed by [REDACTED] Chief Social Development Officer, Ministry of Social Welfare acknowledging the false information contained in the documents submitted during adoption proceedings, and stating that the beneficiary's adoption remains legal and in accordance with Sierra Leone adoption law even though new documentation was submitted after the Order was made.

International adoption procedure guidance provided by the U.S. Department of State at www.travel.state.gov (Sierra Leone, Frequently Asked Questions) states that:

Judges in the High Court of Sierra Leone do not evaluate a child's orphan status as part of the adoption proceeding, and they do not have the ability to authenticate civil documents or verify the identity of witnesses that appear in court. Therefore, an adoption decree issued by the High Court of Sierra Leone cannot be used as primary evidence that a child is an orphan under U.S. immigration law.

The record reflects that the judge in the beneficiary's adoption case did not verify the authenticity of the documents submitted during the adoption proceedings. Nor did the judge investigate the veracity of the claims made regarding the beneficiary's parents. The record establishes further that the beneficiary's adoption was based on fraudulent documents and false claims regarding the beneficiary's birth and the status of his parents. The adoption proceedings therefore appear to be void. The AAO thus finds that the adoption decree does not establish that the petitioners obtained legal custody over the beneficiary as required by section 101(b)(1)(F) of the Act.

The AAO also finds that the petitioners have failed to establish that the beneficiary's natural mother is incapable of providing proper care to the beneficiary, as defined in 8 C.F.R. § 204.3(b). The record contains no evidence to corroborate the statement by the beneficiary's natural mother that she is unable to provide or care for the beneficiary. Moreover, the overseas investigation results discuss relative and neighbor testimony indicating that the beneficiary lived with his maternal aunt for approximately the first three years of his life due to marital problems between his parents, and that the beneficiary lived with his natural mother after his father's death in 1999. The overseas investigation testimony indicates that the beneficiary was sent to Cherith Orphanage only after the organization went house to house registering children for what they claimed was a program to go to the United States. The investigation results note further that the beneficiary's mother's aunt, and a neighbor interviewed during the overseas investigation stated that they had also sent their children to Cherith International to be adopted after they were approached by Cherith International employees.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act; 8 U.S.C. 1361. The AAO finds that the petitioners have failed to meet their burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.